

REMARKS

Applicants wish to thank the Examiner for his keen review of the present patent application. Support for the amendment to claim 9 may be found, among other places, on page 13 of the specification as originally filed. Claim 10 has been cancelled in order to expedite the prosecution of the present patent application and to further business objectives. Therefore, it is respectfully submitted that all amendments comply with 35 USC §132 and no new matter has been added.

Moreover, Applicants acknowledge and appreciate that the Examiner has concluded that claim 9 has allowable subject matter.

I. Rejection Under 35 USC §112

The Examiner has rejected claim 9 under 35 USC §112, paragraph 2 and mentions that the claim is indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Particularly, the Examiner mentions that claim 9 is not clear because the amount of myrtenol and piperonyl acetate is not defined. In order to respond to the Examiner's helpful suggestions, Applicants have amended claim 9, showing that the amounts set forth are in parts per million. In view of the same, it is respectfully requested that the rejection made under 35 USC §112 be withdrawn and rendered moot.

II. Rejection Under 35 USC §102(e)

The Examiner has rejected claims 1-8 under 35 USC §102(e) as being anticipated by Cirigliano et al., U.S. Patent No. 6,036,986 (hereinafter '986). In the rejection, the Examiner mentions, in summary, that the '986 reference discloses a tea beverage containing 0.2% tea solids, sorbic acid, benzoic acid, cinnamic acid, lemon flavor or juice, and essential oils. Particularly, the Examiner believes that any lemon flavor employed will bring along essential oil to the beverage. In view of this, the Examiner believes that the rejection made under 35 USC §102(e) is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

The present invention, as set forth in independent claim 1, is directed to a beverage that contains a preservative system comprising 1 to 175 ppm cinnamic acid, 10 to 200 ppm sorbic acid or benzoic acid and at least one essential oil other than cinnamic acid.

The invention of claim 1 is further defined by the dependent claims which claim, among other things, the type of essential oil, the amount and type of preservative, the amount of essential oil, the amount of tea solids, and that the beverage may be a tea based beverage.

In contrast, the '986 reference describes cinnamic acid for use in tea containing beverages. The tea containing beverage described in the '986 reference is a beverage which is drinkable and prepared from concentrates, extracts or powder. The '986

reference does mention that other flavoring agents and/or juices may be added to the beverage whereby the juices can be fruit juices, vegetable juices and the like. There is no teaching, contrary to the Examiner's conclusion, in the '986 reference to employ at least one essential oil other than cinnamic acid in a beverage as set forth in the presently claimed invention. Additionally, nothing in the '986 reference suggests the essential oils set forth in the claims and nothing in the '986 reference suggests the amount of essential oil that should be used. In view of this, it is respectfully submitted that all limitations of the presently claimed invention are not found in a single source, namely the '986 reference. Thus, Applicants submit that the rejection made under 35 USC §102(e) be withdrawn and rendered moot.

III. Rejection Under 35 USC §103

The Examiner has rejected claims 1-8 under 35 USC §103 as being unpatentable over Cirigliano et al., U.S. Patent No. 6,036,986 (hereinafter '986). In the rejection, the Examiner mentions, in summary, that the '986 reference does not disclose the use of essential oil but the Examiner concludes that use of an essential oil would be well within the purview of the skilled artisan. In view of this, the Examiner believes that the rejection made under 35 USC §103 is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present invention is directed to a beverage that contains a preservative system comprising 1-175 ppm of cinnamic acid, 10-200 ppm sorbic acid or benzoic acid, and at least one essential oil other than cinnamic acid. The claimed beverage is superior in that it is ambient stable, preserved by a minimal amount of sorbic or benzoic acid, and excellent tasting.

Contrary to the Examiner's conclusions, the '986 reference describes cinnamic acid for use in tea containing beverages, and however, there is no teaching whatsoever in the '986 reference to employ essential oils in the matter claimed in the present patent application. Additionally, there is no teaching in the '986 reference to employ essential oils in the amount set forth in the present claims and there is no teaching in the '986 reference to employ the essential oils identified in the claims of the present patent application. In view of this, it is clear that all of the important and critical limitations set forth in the presently claimed invention are not found in the references relied on by the Examiner. In this regard, it is clear that the Examiner has not established a *prima facie* case of obviousness as required under 35 USC §103. Applicants, therefore, request that the obviousness rejection be withdrawn and rendered moot.

Applicants respectfully submit that claims 1-9 are now in condition for allowance. Reconsideration and favorable action are earnestly solicited.

In the event the Examiner has any questions or concerns regarding the present patent application, he is kindly invited to contact the undersigned at his earliest convenience.

Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendment. The attached page is captioned "**Version With Markings To Show Changes Made.**"

Respectfully submitted,



Edward A. Squillante, Jr.
Attorney for Applicant(s)
Reg. No. 38,319

EAS:pod
(201) 840-2925

VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the claims:

Please amend claim 9 and cancel claim 10 as follows:

9. (Amended) A beverage according to claim 1 wherein the preservative system comprises 1 to 30 ppm cinnamic acid, 50 to 150 ppm sorbic acid, 1 to 30 ppm citral dimethyl acetal, 1 to 40 ppm cumic alcohol, and 1 to 20 ppm myrtenol and 1-20 ppm piperonyl acetate.